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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
Rules and Policies on Foreign in the U.S. Telecommunications Market	)	**IB Docket No. 97-142**
Market Entry and Regulation of Foreign-Affiliated Entities	)	**IB Docket No. 95-22**

Comments of the Telecommunications Resellers Association on Petition for Reconsideration

The Telecommunications Resellers Association ("TRA"),[1] through undersigned counsel and pursuant to Section 1.429(f) of the Commissions Rules, 47 C.F.R. § 1.429(f), hereby submits its comments in opposition to the Petition for Reconsideration filed by BellSouth Corporation ("BellSouth") in the above captioned matter. BellSouth seeks reconsideration of the Commission's rejection of its unsupported and insupportable claim that the adoption by the Commission of an open entry standard for WTO Member Country applications to enter the U.S. telecommunications market compels the Commission to extend a similarly-relaxed entry standard

[1] A national trade association, TRA represents more than 650 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. The overwhelming majority of TRA's resale carrier members provide both interstate, interexchange and international services as part of their diversified product portfolios.

to Bell Operating Company ("BOC") applications for in-region, interLATA authority pursuant to Section 271. BellSouth asserts that such action, which would effectively deem all in-region, interLATA applications to be automatically in the public interest, is required in order to remedy what it perceives to be the application of an impermissibly different public interest standard, notwithstanding the vast differences in the nature of, and competitive risks associated with, these fundamentally different circumstances. The Commission should summarily reject, as procedurally flawed and logically inconsistent, BellSouth's repeated efforts to interject this highly parochial issue into the Commission's generally-applicable proceeding addressing circumstances surrounding entry into the U.S. telecommunications market by foreign carriers and the manner in which such entry may maximize benefits to U.S. consumers while aiding in the development of a "competitive landscape for global telecommunications services."[2]

BellSouth asserts that "the public interest standard and presumptions that the Commission adopts in this proceeding should apply equally to BOC applications to enter the U.S. long distance market in their regions."[3] TRA submits that the essential focus of any public interest inquiry undertaken by the Commission is, and will remain, its obligation pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, to determine what course of action under the circumstances presented will work to the advantage rather than the detriment of the consuming public while simultaneously advancing enunciated policy goals. In the *Report and Order and Order on Reconsideration*, IB Docket Nos. 97-142, 95-22, FCC 97-398 (released November 26, 1997) ("*Report and Order*"), the Commission has fulfilled its public

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[2] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities* (Report and Order and Order on Reconsideration), IB Docket Nos. 97-142, 95-22, FCC 97-398, ¶ 29 (released November 26, 1997) ("*Report and Order*".)

[3] BellSouth Petition for Reconsideration at 4.

interest obligations, and has done so by refusing to apply a "cookie-cutter" public interest presumption to clearly non-analogous situations. Applying the open entry standard established for foreign carriers in the *Report and Order* to BOC applications for in-region, interLATA authority (or any other situations not based upon similar circumstances) would effectively preclude the Commission from undertaking individualized review of all situations presented to it. More critically, because "section 271 ultimately obligates the Commission to decide which factors are relevant to our public interest inquiry, how to balance these factors, and whether BOC entry into a particular in-region, interLATA market is consistent with the public interest,"[4] the application of the type of presumption urged by BellSouth to BOC in-region, interLATA applications (indeed, the application of any presumption whatsoever) would prevent the Commission from adequately fulfilling its obligations pursuant to Section 271 and thus directly conflict with the statute.

The Commission has not deviated from its traditional public interest inquiry in this proceeding. BellSouth's criticism of the Commission for reaching a different conclusion based upon the application of a single public interest analysis to two vastly different sets of circumstances reflects merely its own, but clearly not the Commission's, disregard for those differences in circumstance, including differing policy objectives and differing degrees of competitive risk to market segments which are far from identical. Most egregiously, however, BellSouth exhibits little respect for, or commitment to satisfying, the dictates of Section 271, the statutory mechanism pursuant to which the BOC may eventually attain the in-region, interLATA authority it so desperately desires -- but only after having fully satisfied all requirements thereof.

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[4] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, FCC 97-238, ¶ 383 (released August 19, 1997) ("*Ameritech Order*").

Those requirements include a public interest analysis by the Commission not "limited narrowly to assessing whether BOC entry would enhance competition in the long distance market,"[5] the position essentially urged by BellSouth throughout its Petition for Reconsideration. Rather, the Commission is compelled to apply its "traditionally broad public interest analysis . . . consider[ing] factors relevant to the achievement of the goals and objectives of the 1996 Act."[6]

As the Commission has repeatedly acknowledged, "[t]he overriding goals of the 1996 Act are to open all telecommunications markets to competition by removing operational, economic, and legal barriers to entry."[7] This laudable goal, focused upon the creation of a truly competitive national telecommunications market, is fully consistent with and handsomely complements the policy which the Commission seeks to advance in the instant proceeding. Through the *Report and Order*, the Commission has crafted and applied to foreign carriers an entry standard calculated to maximize benefits to the American consuming public while simultaneously fostering the goal of "promot[ing] effective competition in the U.S. telecommunications services market by removing unnecessary regulation and barriers to entry that can stifle competition and deprive U.S. consumers of the benefits of lower prices, improved service quality, and service innovations."[8]

The adoption of an open entry policy, reasoned the Commission, will "encourage foreign governments to implement their commitments to open their telecommunications

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[5] *Id.* at ¶ 386.

[6] *Id.* at ¶ 385.

[7] *Id.* at ¶ 386.

[8] *Report and Order*, FCC 97-398 at ¶ 11.

markets."[9] In determining that entry by foreign carriers into the U.S. telecommunications market under the conditions set forth in the *Report and Order* posed relatively small risks of competitive harm to the interexchange telecommunications market, the Commission was mindful that nearly 70 nations around the globe have entered into "binding commitments . . . to open their telecommunications markets to competition."[10] Additionally, the Commission noted favorably the "increased pressure to lower settlement rates and the emergence of new technologies and routing configurations" which are already contributing to the emergence of a more equitably competitive global telecommunications market.[11]

Conversely, the Congressional directive that BOC in-region, interLATA authority shall not be permitted "until the Commission is satisfied . . . that the BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition,"[12] reflects the valid concern that premature entry would depress, rather than promote the development of competition in the local exchange and exchange access market and permit a BOC to utilize its "control over bottleneck facilities to undermine competition in the long distance market."[13] As the Commission has recognized, a BOC has the "incentive to discriminate in providing exchange access services and facilities that its affiliate's rivals need to compete in

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[9] *Id.*

[10] *Id.* at ¶ 29.

[11] *Id.*

[12] *Ameritech Order*, FCC 97-298, at ¶ 386.

[13] *Id.* at ¶ 388.

the interLATA telecommunications services and information services market."[14] Moreover, the Commission has correctly noted that the BOCs "have no economic incentive, *independent of the incentives set forth in sections 271 and 274 of the 1996 Act,* to provide potential competitors with opportunities to interconnect with and make use of . . . [their] network and services."[15]

BellSouth unabashedly attempts to chip away at the public interest showing a BOC must demonstrate in order to warrant grant of Section 271 authority by inappropriately equating two vastly different situations: (1) entry into the U.S. telecommunications market by foreign carriers whose governments have entered into binding commitments to facilitate entry into their respective home markets by U.S. telecommunications carriers (and who will never possess the potential to wield possibly debilitating market power in the U.S. interexchange market), and (2) entry into the in-region, interLATA market by entities which have been specifically prohibited by law from providing those services since entry of the Modified Final Judgment, a restriction deemed "clearly necessary to preserve free competition in the interexchange market.[16] BellSouth's position is nothing short of ludicrous.

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[14] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd. 21905, ¶¶ 7 - 13 (1996), *recon.* 12 FCC Rcd. 2297 (1997), *pet. for rev. pending sub nom.* SBC Communications Corp. v. FCC, Case No. 97-1118 (D.C. Cir. Mar. 6, 1997), *further recon. on remand* FCC 97-222 (released June 24, 1997), *pet. for rev. pending sub nom.* Bell Atlantic Tel. Cos. v. FCC, Case No. 97-1067 (D.C. Cir. July 11, 1997).

[15] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 55 (1996) (*emphasis added*), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.*, FCC 97-295 (Oct. 2, 1997), *modified* 1997 U.S. App. LEXIS 28652 (8th Cir. Oct. 14, 1997), *writ of mandamus granted* (8th Cir. Jan. 22, 1998), *cert. granted sub nom.* AT&T Corp. v. Iowa Utilities Board (Jan. 26, 1998), *pet. for rev. pending sub nom.* Southwestern Bell Telephone Co. v. FCC, Case No. 97-3389 (Sept. 5, 1997).

[16] *Id.* at ¶ 10, citing United States v. Western Elec. Co., 552 F. Supp. 131, 188 (D.D.C. 1982), *aff'd sub nom.*, Maryland v. United States, 460 U.S. 1001 (1983).

The Commission appropriately recognized the significant differences between the two situations set forth above, arriving at the obvious conclusion that sufficient similarities do not exist "between BOCs and foreign carriers to warrant identical treatment."[17] And the truism voiced by the Commission, that there is "nothing irrational about applying different entry standards to address different risks of competitive harm"[18] lends no support to BellSouth's baseless accusation that the Commission has grounded its WTO Member open entry policy on impermissibly disparate treatment of BOCs and foreign carriers.

As noted above, a separate procedural vehicle, specifically enacted by Congress and implemented by the Commission, provides the mechanism by which BOCs may attain in-region, interLATA authority. As part of that statutory scheme, the Commission is required to undertake anew a broad-reaching, individualized public interest inquiry upon the presentation by a BOC of each and every application for authority pursuant to Section 271. Grant of the relief requested by BellSouth is thus not merely inadvisable, it is actually impossible. In every decision reached by the Commission addressing the advisability of granting in-region, interLATA authority to a BOC, the Commission has discharged its obligation to undertake the above-described broad-reaching public interest determination. Guided by the principles set forth by Congress, the Commission has examined the respective factual records presented, placing significant emphasis on the opening of a BOC's local exchange market to competition. Satisfaction of this condition has been held to be an absolute prerequisite for the finding that grant of in-region, interLATA authority would be in the public interest. Thus far, no applicant has demonstrated this essential requirement to the Commission's satisfaction.

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[17] *Report and Order*, FCC 97-398, at ¶ 5.

[18] *Id.*

The Commission's careful scrutiny of BOC applications for in-region, interLATA authority does not lead to the conclusion sought by BellSouth, that is, that the public interest determination undertaken by the Commission is something other than the classic public interest analysis applied by the Commission in other circumstances. In the present context, application of this public interest analysis has resulted in the adoption of an open entry policy for WTO Member Country applicants seeking to enter the U.S. telecommunications market. To reach a similar outcome, the Commission would necessarily need to be presented with circumstances significantly more analogous than those advanced by BellSouth.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to summarily deny BellSouth's Petition for Reconsideration in its entirety.

Respectfully submitted,

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February 10, 1998

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CERTIFICATE OF SERVICE

I, Marie E. Kelley, hereby certify that a copy of the foregoing Comments of the Telecommunications Resellers Association on Petition for Reconsideration was served this 10th day of February, 1998, by United States First Class mail, postage prepaid, on the following:

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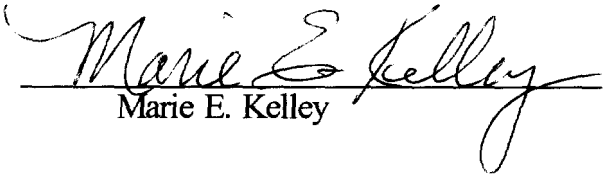

Marie E. Kelley

* By Hand Delivery